

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; AND CANNON
COCHRAN MANAGEMENT SERVICES,
INC.,
Appellants,
vs.
ROBERT HOLLAND,
Respondent.

No. 82843-COA

FILED

APR 20 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Las Vegas Metropolitan Police Department (LVMPD) and Cannon Cochran Management Services, Inc. (CCMSI) (or collectively appellants), appeal from a district court order granting a petition for judicial review. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

In 2012, Robert Holland retired from his job as a police officer with LVMPD after 25 years of service.¹ In 2019, Holland experienced pain in his chest twice and consulted with his cardiologist, Dr. Dost Wattoo, M.D., regarding said pain. Dr. Wattoo recommended that Holland immediately go to the emergency room at Summerlin Hospital Medical Center (SMHC). Holland was ultimately admitted to SMHC, and while there, attending physicians determined that Holland had recently suffered two heart attacks and diagnosed him with coronary artery disease, COPD, and emphysema. After treatment that lasted nearly a week, Holland was released from the hospital.

¹We do not recount the facts except as necessary to our disposition.

After being released, Holland again consulted with Dr. Wattoo, who confirmed Holland's numerous heart disease diagnoses and completed two workers' compensation forms on Holland's behalf. Due to his heart disease, Holland was unable to continue his post-retirement employment, and he filed for workers' compensation benefits under the police officer/firefighter heart and lung bill.² After reviewing Holland's medical information, LVMPD's claims adjuster, CCMSI, denied Holland's workers' compensation claim because it did not "meet the statutory requirements of a heart disease claim and/or an accident, injury or occupational disease," nor could it be established that Holland's injury arose out of the course and scope of employment.

Holland appealed the denial of his workers' compensation claim to the Nevada Department of Administration, and the hearing officer affirmed the claim denial, concluding that Holland failed to meet the requirements of NRS 617.457.

Holland appealed the hearing officer's decision and, after a hearing, the appeals officer found that Holland failed to meet his burden of establishing a compensable claim. The appeals officer supported its decision with reports from Holland's annual physical examinations from 2008-2012, as well as his medical records from his 2019 hospitalization at SHMC. Specifically, the appeals officer found that Holland was warned in 2011 and 2012 of high triglyceride levels, and the 2019 lab results revealed Holland's triglyceride levels had again increased. The appeals officer found that this, by itself, established "the existence of a predisposing condition

²Nevada's police officer/firefighter heart and lung bill, which is governed in part by NRS 617.457, provides an avenue for law enforcement officers, firefighters, and other frontline workers to file workers' compensation claims pertaining to certain diseases, including heart disease.

that [Holland] was ordered in writing to correct and which was within his ability to correct.” The appeals officer thus concluded that LVMPD and CCMSI properly denied Holland’s claim pursuant to NRS 617.457(11).³

Holland then filed a petition for judicial review of the appeals officer’s determination with the district court. The district court granted Holland’s petition for judicial review and entered an order reversing the appeals officer’s decision, finding, inter alia, that the appeals officer’s findings that Holland failed to correct his elevated triglycerides, and that such corrective action was within Holland’s capabilities, was not supported by substantial evidence in the record. LVMPD and CCMSI now appeal.

On appeal, LVMPD contends that the district court erred as a matter of law when it determined that it was not within Holland’s ability to correct his predisposing condition of elevated triglycerides and argues that substantial evidence in the record supported the appeals officer’s determination. Further, LVMPD contends that it was Holland’s burden to show that he was unable to correct his predisposing condition, which he failed to do. Conversely, Holland contends that the district court did not err and that substantial evidence did not support the appeals officer’s determination. Additionally, Holland asserts that it was LVMPD’s burden to show that Holland was able, but failed, to correct his predisposing condition under NRS 617.457(11).

“The standard for reviewing petitions for judicial review of administrative decisions is the same for [the appellate court] as it is for the district court.” *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262

³Appellants did not provide the transcripts for the hearing before the appeals officer, so it is unknown from the record what was argued or if additional witness testimony was taken. However, the appeals officer’s order indicated the basis for her decision.

P.3d 715, 718 (2011). This court reviews questions of law de novo, *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010), but it “shall not substitute [its] judgment for that of the agency as to the weight of evidence on a question of fact,” NRS 233B.135(3). Rather, “[w]e defer to an agency’s findings of fact as long as they are supported by substantial evidence.” *Phillips*, 126 Nev. at 349, 240 P.3d at 4. Substantial evidence is “evidence which a reasonable mind might accept as adequate to support a conclusion.” NRS 233B.135(4). This court may reverse a final decision if the final decision of the agency was affected by an error of law, if it was “[c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record,” or if the decision was “[a]rbitrary or capricious or characterized by abuse of discretion.” NRS 233B.135(3)(e), (f). In our review, this court does “not give any deference to the district court decision.” *Warburton*, 127 Nev. at 686, 262 P.3d at 718.

Generally, to receive benefits for an occupational disease, an employee must “establish by a preponderance of the evidence that the employee’s occupational disease arose out of and in the course of his employment.” *Emps. Ins. Co. of Nev. v. Daniels*, 122 Nev. 1009, 1015, 145 P.3d 1024, 1028 (2006) (quoting NRS 617.358(1)). But, pursuant to the police officer/firefighter heart and lung bill, which is governed in part by NRS 617.457, diseases of the heart, diagnosed at any time during a police officer’s life, are “conclusively presumed to have arisen out of and in the course of the employment” where the police officer ceased employment after completing 20 years or more of service. See NRS 617.457(1)(c). However, NRS 617.457(4) requires that “each employee who is to be covered for diseases of the heart . . . shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his or her employment.”

And, NRS 617.457(11) provides that “[f]ailure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to a physical examination . . . excludes the employee from the benefits of this section if the correction is within the ability of the employee.” Accordingly, an employer can defend a workers’ compensation claim “by showing that the employee failed to correct a predisposing condition . . . after being warned to do so in writing.” *Emps. Ins. Co. of Nev.*, 122 Nev. at 1016, 145 P.3d at 1029.

In this case, it is undisputed that Holland was diagnosed with heart disease, that he was disabled by said heart disease, and that he had been employed for the requisite number of years with LVMPD to qualify for the conclusive presumption that the heart condition arose out of and in the course of his employment with LVMPD and, therefore, is afforded protection under NRS 617.457(1). So, the question before us is whether substantial evidence in the record supports the appeals officer’s denial of Holland’s claim on the basis Holland failed to correct predisposing conditions. We determine it does not.

First, the appeals officer’s finding that Holland failed to correct his predisposing condition of elevated triglycerides, when ordered to do so in writing, pursuant to NRS 617.457(11), is not supported by substantial evidence. In making its finding, the appeals officer focused on Holland’s triglyceride levels from his 2011 and 2012 physical examinations, as well as triglyceride levels from Holland’s 2019 hospitalization at SHMC. In 2011, on Holland’s physical examination form, the physician marked “Elevated Triglycerides,” “Elevated Cholesterol,”⁴ and “Abnormal Hearing” as

⁴Whether Holland failed to correct his cholesterol levels is not an issue on appeal. The appeals officer did not find that Holland failed to correct his

predisposing conditions. The examining physician ordered a low-fat diet, 250 mg of niacin daily, and protective hearing as the corrective action. In 2012, on Holland's physical examination form, the physician marked "Elevated Triglycerides" and "Abnormal Hearing" as predisposing conditions and noted that Holland showed low HDL cholesterol levels. The physician ordered "hearing protection," "low fat diet," increased cardio, and daily over-the-counter "omega 2 [sic]" supplements.⁵ Holland was never prescribed any prescription medication to alleviate the elevated triglyceride levels. Holland retired in 2012 and was no longer required to undergo mandatory yearly physical examinations.

Here, the corrective actions listed on Holland's physical examination forms are ambiguous.⁶ It is unclear by reading the physical examination reports which corrective actions correlate with which predisposing conditions. The corrective actions in 2011 and 2012 were for

elevated cholesterol levels, nor did the appeals officer cite to Holland's cholesterol levels as a reason for claim denial. Indeed, the appeals officer did not address Holland's cholesterol levels in any meaningful way. Rather, the appeals officer based her decision on Holland's failure to correct his elevated triglyceride levels.

⁵The physical examination report that listed cardio as a corrective action merely notated an upward pointing arrow and the word "Cardio." Presumably, the examining physician was suggesting that Holland increase his cardiovascular activity; however, it is not entirely clear that this corrective action was intended to address his triglyceride levels.

⁶For example, Holland's physical examination report from 2009 noted "Elevated Triglycerides" and "Abnormal Hearing" as Holland's predisposing conditions and indicated that Holland's triglyceride levels were 177 mg/dL, which were higher than his levels in 2008, 2010, and 2011. However, the examining physician only ordered "hearing protection" as Holland's corrective action. Thus, it is unclear if there was any meaningful corrective action recommended in 2009 to address the elevated triglyceride levels.

elevated triglyceride levels, elevated cholesterol, low HDL cholesterol, and abnormal hearing. But it is unclear what corrective action, if any, Holland was supposed to undertake specifically to correct his elevated triglyceride levels.⁷ It is not the case that Holland was prescribed medication for his elevated triglycerides and he failed to take such medication, but rather that he was given a list of ambiguous corrective actions with no clear connection to his elevated triglycerides. Therefore, the appeals officer erred in determining that Holland failed to correct his predisposing condition when ordered to do so because it cannot be determined which corrective actions, if any, were meant to correct the specific predisposing condition of elevated triglycerides.

Second, the appeals officer's finding that Holland had the ability to correct his predisposing condition of elevated triglycerides is not supported by substantial evidence. In the order, the appeals officer failed to point to any facts in the record to support its finding that Holland had the ability to correct the levels from the 2011 and 2012 physical examinations. Rather, the appeals officer found that Holland was "warned in 2011 and 2012 of high triglyceride levels, and when he was admitted to the hospital in 2019, his triglyceride level was almost double what it was in 2012" and summarily concluded that "[t]his evidence alone satisfied Administrator's burden of establishing the existence of a predisposing

⁷Indeed, there is some indication in the record that Holland may have followed the physician's written corrective action to increase cardio, as Holland's workers' compensation form indicated that he had suffered from his second heart attack while "leaving the gym." However, what predisposing condition increased cardio was meant to correct and to what extent Holland followed this corrective action is speculative.

condition that [Holland] was ordered in writing to correct and which was within his ability to correct.”

As stated above, it is unclear which written actions were meant to be corrective measures for Holland’s elevated triglycerides. Accordingly, it is unclear whether it was within Holland’s control or ability to correct his elevated triglyceride levels.⁸ Additionally, the record does not show that Holland was given corrective actions for his other predisposing conditions, such as for his testosterone treatments, or that Holland would have been able to reduce his elevated triglyceride levels if he had been given any such corrective measures.⁹ Based on the foregoing, substantial evidence does not support the appeals officer’s determination that Holland’s elevated triglycerides were within his ability to correct pursuant to NRS 617.457(11). Thus, it cannot be determined that even if Holland had followed the

⁸Although the examining physicians ambiguously ordered Holland to adopt a low-fat diet and to increase his cardio, there is no indication from the record that Holland had the ability to do so. *See City of Las Vegas v. Burns*, No. 76099-COA, 2019 WL 6003344 (Nev. Ct. App. Nov. 13, 2019) (Order of Affirmance) (affirming the district court’s reversal of an appeals officer’s conclusory determination that a claimant was capable of correcting his predisposing conditions because his physicians ordered him to diet and exercise). It is also unclear whether Holland failed to take any such corrective actions as instructed prior to his hospitalization in 2019.

⁹Holland’s discharge summary from SHMC noted that his use of testosterone was likely precipitating his heart disease but said testosterone treatment was never contemplated in his previous physical examinations, and he was never ordered to stop such treatment. Further, Holland was diagnosed with hypertension in 2015 and began taking medication for the same, but despite Holland’s compliance with said medication, he still suffered from heart disease and elevated triglyceride levels in 2019. Given this, even if Holland completed all corrective actions as ordered by the examining physician, there is no indication from the record that his elevated triglycerides were within his ability to correct.

corrective measures as recommended, such measures would have reduced his triglyceride levels and prevented his heart disease. Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tara D. Clark Newberry, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Greenman Goldberg Raby & Martinez
Eighth District Court Clerk